

RESOLUTION 11-36      Passed April 25, 2011

**AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN AN EQUIPMENT LEASE AGREEMENT WITH WESTERN PETROLEUM COMPANY FOR REFUELING EQUIPMENT AT THE DEKALB TAYLOR MUNICIPAL AIRPORT.**

**BE IT RESOLVED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, as follows:

**Section 1.** That the Mayor of the City of DeKalb be authorized and directed to execute an Equipment Lease Agreement with Western Petroleum Company for refueling equipment at DeKalb Taylor Municipal Airport (DTMA), a copy of which is attached hereto and made a part hereof as Exhibit "A."

**Section 2.** That the initial term of said agreement commences on May 1, 2011 and continues through April 30, 2014.

**Section 3.** That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a regular meeting thereof held on the 25<sup>th</sup> day of April, 2011 and approved by me as Mayor on the same day. Passed on omnibus roll call vote: 6-0-1. Aye: Teresinski, Verbic, Gallagher, Naylor, Baker, Kammes. Nay: None. Abstain: Simpson.

**ATTEST:**

  
STEVEN C KAPITAN, City Clerk

  
KRIS POVLSSEN, Mayor



# EXHIBIT A



## WESTERN PETROLEUM COMPANY EQUIPMENT LEASE (Long Term)

CITY CLERK FILES  
Number: RES 11-036  
Date: 4/25/11

This **EQUIPMENT LEASE** is made this **1<sup>st</sup> day of May, 2011**, between **WESTERN PETROLEUM COMPANY**, having an office at 9531 West 78th Street, Eden Prairie, Minnesota 55344 (hereinafter called "**LESSOR**") and **CITY OF DEKALB**, a municipality, organized under the laws of the state of Illinois having an office at 3232 Pleasant Street, DeKalb, IL 60115 ("**LESSEE**")

**WHEREAS**, LESSEE desires to lease the following equipment located at 3232 Pleasant Street, DeKalb, IL 60115 from LESSOR:

### EQUIPMENT DESCRIPTION

**1991 Ford 1200 Gallon Avgas Refueler  
VIN#: 1FDNK64PXMVA34655 Alternate ID: 8877**

The above described equipment, including without limitation all accessories, and other property associated therewith, and any accessions thereto, and all software, engineering drawings, service marks and all licenses, permits and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics relating thereto and all replacements, repairs, and additions thereto (collectively the "Equipment").

For and in consideration of the mutual promises set forth below, LESSOR and LESSEE agree as follows:

1. LESSOR agrees to lease to LESSEE and LESSEE agrees to lease from LESSOR the Equipment upon the terms and conditions set forth herein.
2. LESSEE shall pay LESSOR, as rent for the Equipment, the amount of **\$400.00** for each month during the term of this Lease plus any sales or use tax levied with respect to the Equipment. Rent is due and payable on the first day of each month during the term of this Lease. Any sales and use taxes shall be paid by LESSEE when such taxes are due. LESSEE shall also pay to LESSOR an Equipment delivery fee of \$N/A prior to delivery of the Equipment and an Equipment pickup fee of \$N/A prior to the pickup of the Equipment at the expiration or termination of this Lease. From time to time, Lessor may enter into lease or financing arrangements for the equipment identified in this agreement with a third party entity ("Lender"). Lessee acknowledges that if Lessor enters into such lease or financing arrangements for any Equipment identified in this agreement, then the Equipment is owned by Lender or subject to Lender's security interest and the Lessor and Lessee's right to the use of the Equipment are subject and subordinate to the rights granted by Lessor to Lender.
3. This Lease shall commence on the **1<sup>st</sup> day of May, 2011** and shall continue in effect, unless terminated at any earlier time pursuant to the terms of this Lease, for a period of 3 years through and including **April 30<sup>th</sup>, 2014**.
4. LESSEE agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by LESSOR.

LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE EQUIPMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST INTERFERENCE OR AGAINST INFRINGEMENT, AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT. LESSEE agrees to pay the rent required hereunder without regard to the condition of the Equipment.

5. This is a true lease and title to the Equipment and ownership thereof at all times shall be and remain in

LESSOR, notwithstanding possession and use thereof by LESSEE, and LESSEE's rights in the Equipment are as defined and set forth in this Lease. LESSEE acknowledges and agrees that LESSOR is not the producer or manufacturer of any Equipment leased hereunder. LESSOR does agree to call upon the manufacturer to perform under terms of the manufacturer's warranty on the Equipment, if any, upon written request of LESSEE and agrees further to notify LESSEE promptly if and after LESSOR receives official notice of a factory recall campaign and LESSOR shall have no further obligation with respect thereto except to direct LESSEE to an agency authorized to perform service under such recall notice and any charge for service or parts thereunder shall be the responsibility of LESSEE.

6. LESSEE shall comply with all laws and regulations relating to the Equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all license, permit and registration fees and assessments now or hereafter imposed by any governmental body or agency upon the Equipment or its use, transfer or possession or the rentals paid under this Lease. LESSEE shall prepare and file all tax returns relating to taxes for which LESSEE is responsible hereunder which LESSEE is permitted to file under the laws of the applicable taxing jurisdiction.

7. LESSOR shall have the right during normal business hours to enter into and upon the premises where the Equipment is located for the purposes of inspecting the same or observing its use.

8. Without the prior written consent of LESSOR, LESSEE shall not make any alterations, additions or improvements to the Equipment. Any alteration, addition or improvement shall become the property of LESSOR and part of the Equipment for all purposes hereunder.

9. LESSEE, at its own cost and expense, shall keep the Equipment in good repair, condition and working order and shall furnish or purchase any and all parts, mechanisms, devices and labor required to keep the Equipment in good mechanical condition and working order. Routine maintenance to be performed by LESSEE on the Equipment shall include lubrication, oil, oil filter and engine fuel filter changes, maintenance of hydraulic fluids, power steering fluid, differential and transmission oil, tire pressure, radiator hoses and fan belts, and keeping the Equipment clean and free of dirt and other material which may impede proper operation. Routine maintenance on the Equipment shall also include replacing batteries as needed, performing regular tune-ups, and calibration of all meters after initial certification.

LESSOR shall provide for major repairs and/or replacement for the following components on the equipment which in the LESSOR'S sole judgment are not necessitated by LESSEE'S neglect, abuse, accident, or failure to perform maintenance as follows: Vehicle drive train which is defined as the engine (excluding engine driven accessories such as alternator, starter, cooling system components and others as detailed in the paragraph above), transmission, drive shaft and differential/rear axle assembly; Power Take-Off, PTO drive shaft and product pump; Product storage tank, tank support structure (saddles, sills); Supply aviation products filters for installation by LESSEE (LESSEE responsible for proper disposal of used aviation product filters in accordance with applicable federal, state, and/or local regulations); Periodic paint and replacement of decals; and Turbocharger repair/replacement.

Complete and accurate maintenance records shall be kept by LESSEE, and LESSOR shall be entitled to inspect the Equipment and the maintenance records at any time during regular business hours. At LESSOR's option, any item of repair or maintenance which is the responsibility of LESSEE may be performed by LESSOR and billed to LESSEE as additional rent.

10. LESSEE hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever during the period from and during the delivery of the Equipment to LESSEE until it is returned to LESSOR. In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair, or rendered permanently unfit for any reason, or in the event of condemnation or seizure, LESSEE shall promptly pay LESSOR the sum of the following: (a) all rent and other amounts payable by LESSEE hereunder which are due but unpaid at the time of computation; (b) the present value of all unpaid rent for the balance of the initial lease term (with respect to that item or those items of Equipment) at the time of computation, computed using a discount rate of eight percent per annum; (c) the anticipated fair market value of such items of Equipment at the expiration of the initial lease term, which LESSOR and LESSEE agree shall be conclusively deemed for this purpose to be equal to ten percent (10%) of the original cost of such Equipment; (d) any expenses incurred by LESSOR in enforcing its rights under this Agreement; and (e) interest on any past due amounts as provided elsewhere in this Agreement. Any insurance proceeds received by LESSOR on insurance purchased by LESSEE shall be credited to LESSEE's obligation under this section

and LESSEE shall be entitled to any surplus.

11. Unless otherwise agreed by LESSOR in writing, LESSEE will cause the Equipment subject to this Lease to be located or garaged (after initial delivery to LESSEE) at LESSEE's address located at 3232 Pleasant Street, DeKalb, IL 60115, until such time as the Equipment is returned to LESSOR or returned in accordance with LESSOR's instructions.

12. **LESSEE at its expense shall provide insurance coverage in amounts covering those risks, and with insurance carriers in all cases acceptable to LESSOR for all risks of: (a) loss, theft or damage to the Equipment, with coverage not less than the original cost of the Equipment (excluding depreciation); (b) public liability and property damage covering personal injuries, death, property damage or costs, damages or liabilities under any federal or state laws or regulations with respect to spillage or leakage of any hazardous substances, pollutants, contaminants or petroleum products resulting from the ownership, maintenance, use, operation or transportation of the Equipment, with coverage of not less than \$2,000,000.00 per occurrence; and (c) Aviation General Liability (bodily injury and property damage) Insurance of not less than \$2 million Combined Single Limit, including on premises auto liability and liability arising out of the use of mobile equipment; and (d) in the case of motor vehicles, all such insurance commonly carried by owners of such motor vehicles. Each of the insurance policies providing said coverage shall name LESSOR as additional insured and loss payee, provide that the policy may not be canceled or materially altered without thirty (30) days prior written notice to LESSOR, and be primary without right of contribution from any insurance of LESSOR. LESSEE shall, if requested by LESSOR, provide LESSOR with insurance declaration certificates evidencing said coverage prior to shipment or delivery of the Equipment.** LESSEE hereby appoints LESSOR as LESSEE's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for loss or damage or returned premium under any insurance policy of LESSEE's.

13. LESSEE shall and does hereby agree to indemnify and hold LESSOR and each of its directors, officers, employees, agents or affiliates harmless from any and all claims, demands, actions, suits, proceedings, costs, expenses, damages, fines, forfeitures and liabilities (including attorneys' fees) arising out of, connected with or resulting from the delivery, possession, use, operation, maintenance, repair or return of the Equipment by LESSEE or its employees, agents, customers, invitees or vendors. This indemnification of LESSOR by LESSEE shall include without limitation any costs, including clean-up costs, or liability of any kind or nature whatsoever resulting from or associated with above-ground or underground spillage or leakage of any fuels, petroleum products or other materials contained in or about the Equipment. LESSEE's obligations under this section shall survive expiration of any rental term or the termination of this Agreement.

14. LESSEE represents and warrants to LESSOR that: (a) this Lease constitutes the LESSEE's legal, valid and binding obligation and is enforceable against LESSEE in accordance with its terms; (b) LESSEE's entry into and performance under this Lease will not result in any breach, default or violation under LESSEE's charter, organizational and governance documents or any other agreement to which LESSEE is a party or to which it or its property is subject; (c) there are no suits or proceedings pending or threatened before any court, governmental agency or arbitrator which, if determined adversely to LESSEE, would have a material adverse effect on its financial condition or ability to perform its obligations under this Lease; (d) any financial or other information which LESSEE has furnished LESSOR concerning the business or condition of LESSEE was true, correct and complete at the time furnished; and (e) the Equipment when subjected to use by the LESSEE will not be or become fixtures under applicable law.

15. Nothing herein contained shall obligate the LESSOR to remove, replace or install any underground or above-ground equipment.

16. Any new additional equipment hereinafter installed or placed upon the premises by the LESSOR shall not be subject to the terms of this Lease unless the same are accessions to the Equipment.

17. LESSEE shall return the Equipment to LESSOR at the termination of this Lease in the same good order and condition in which it was received by the LESSEE, reasonable wear and tear excepted.

18. LESSEE agrees to permit or suffer the Equipment to be serviced only by persons specially qualified to do so and to be operated only by careful and licensed employees who are employed by LESSEE, and LESSEE agrees to require every operator of the Equipment to operate the same with care and diligence and to use every reasonable precaution to prevent any loss or damage thereto or damage to third persons or to property of third persons.

19. LESSOR shall not be responsible for any loss of business or other damage caused by time lost in repair or replacing any Equipment, irrespective of the cause thereof, or caused by LESSOR's failure or delay in delivering any Equipment leased or to be leased hereunder, or caused by any failure to perform any provisions hereof, resulting from fire or other casualty, riot, strike or other labor difficulty, governmental regulations or restrictions or any other cause whether or not due to negligence or beyond LESSOR's control. In no event shall LESSOR be liable for any loss of profits or other consequential damages or any inconvenience resulting from any theft, damage to, loss of, defect in or failure of any Equipment leased hereunder or the time consumed in recovering, repairing, adjusting, servicing or replacing the same and there shall be no abatement or apportionment of rental during such time.

20. LESSOR and LESSEE agree to save the other harmless from any liability or claim by others or any government, including all expenses and reasonable attorney's fees incurred incident thereto, arising from its respective relationship with its employees whether under the industrial accident laws, workers' compensation laws, or state, local or federal laws applicable to the relationship between employers and employees. Each party shall be responsible for the payment of all taxes and fees relating to its employees.

21. LESSEE shall not assign, transfer, pledge, or encumber this Lease, the Equipment or any part thereof, or any interest therein without the prior written consent of LESSOR. LESSEE shall not sublet or lend the Equipment, or any part thereof, or permit the Equipment or any part thereof to be used by anyone other than LESSEE without the prior written consent of LESSOR. Subject always to the foregoing, this Lease inures to the benefit of, and is binding upon the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

22. An event of default under this Lease ("Event of Default") shall include the following:

- (a) Failure by LESSEE to pay in a timely manner when due rent or any other sums to which LESSOR is entitled hereunder; or
- (b) Failure by LESSEE to perform any other obligations hereunder; or
- (c) LESSEE's material misstatement herein or in any document supplied to LESSOR; or
- (d) LESSEE's attempt to sell, part with possession, transfer, sublet, or encumber any part of the Equipment; or
- (e) Failure by LESSEE to comply with federal, state or local laws or regulations pertaining to the operation of LESSEE's business; or
- (f) LESSEE's default under any other agreement(s) between LESSOR and LESSEE including but not limited to any fuel supply agreements; or
- (g) LESSEE's declaration of bankruptcy or institution of any insolvency or receivership proceeding; or
- (h) Breach of any provision of this Lease or any trademark or branding agreements LESSEE may have with third parties.

23. Upon the occurrence of an Event of Default and at any time thereafter, LESSOR may exercise from time to time any one or more of the following remedies:

- (a) terminate this Lease as to any portion or all of the Equipment;

- (b) take immediate possession of any or all of the Equipment, wherever situated, and for such purposes enter upon any premises without liability for so doing;
- (c) hold, use, lease, sell or otherwise dispose of any or all of the Equipment in such manner as LESSOR in its sole discretion may decide;
- (d) accelerate the due date of all remaining rent and any other payments due hereunder for the remaining term of the Lease, whereupon said amounts shall be immediately due and payable;
- (e) recover from LESSEE any and all damages and expenses including reasonable attorneys fees and expenses of repossession, repair, storage, transportation and disposition, which LESSOR shall have sustained by reason of any default by LESSEE under this Lease;
- (f) expend such monies as LESSOR deems appropriate to cure or mitigate the effect of an Event of Default, or to protect the LESSOR's interest in the Equipment and this Lease, with all such sums to be immediately reimbursed to LESSOR by LESSEE;
- (g) set off LESSEE's security deposit or any other property of LESSEE held by LESSOR against any amount owed by LESSEE to LESSOR; and
- (h) exercise any other remedy permitted by law, equity or any other agreements with LESSEE or any guarantor of the Lease.

No remedy given in this paragraph is intended to be exclusive and all remedies shall be cumulative. No express or implied waiver by LESSOR of any Event of Default shall constitute a waiver of any other Event of Default or the same Event of Default at a different time.

24. Any written notices hereunder shall be deemed to have been given when delivered personally, deposited in the United States mails, postage prepaid, or delivered to an overnight courier service (such as Federal Express) and, if to LESSEE, addressed to its address set forth at the heading of this Agreement or to such other address as may be last known to LESSOR and, if to LESSOR, addressed to Western Petroleum Company: 9531 West 78th Street, Eden Prairie, Minnesota 55344, Attn: Chief Financial Officer or such other address as LESSOR may hereafter specify in written notice to LESSEE.

25. LESSEE authorizes LESSOR to authenticate any records and will promptly execute and deliver to LESSOR such further documents and take such further action as LESSOR may reasonable request in order to more effectively carry out the intent and purpose of this Lease, and to fully protect LESSOR's interest hereunder in accordance with the Uniform Commercial Code or other applicable law. LESSEE authorizes LESSOR to file all appropriate financing statements and amendments thereto covering the Equipment in the proper filing offices. LESSEE agrees to furnish any information required for filing to LESSOR promptly upon request. Upon LESSEE's request, LESSOR shall provide a copy of the filed Uniform Commercial Code.

26. This is a net, net, net lease and LESSEE's obligation to pay the rent and other amounts due hereunder is unconditional and not subject to abatement, reduction or set off, defense, counterclaim or interruption of any kind. This Lease cannot be canceled or terminated except as expressly provided herein.

27. Unless otherwise agreed to by LESSOR in writing, LESSEE shall keep all Equipment free from any marking or labeling which might be interpreted as a claim of ownership thereof by LESSEE or any party other than LESSOR or anyone so claiming through LESSOR. IF LESSOR requests, LESSEE shall cause the Equipment to be plainly marked or tagged to indicate LESSOR's interest in the Equipment.

28. This Lease, together with any other written instrument executed by the parties hereto or any document executed by LESSEE pursuant to any executed agreement of the parties hereto which refers to or secures the performance of this Lease, constitutes the entire agreement between LESSOR and LESSEE. This Lease shall not be amended, altered, or changed, or any obligation hereunder waived, except by written agreement signed by the parties hereto. No soliciting agent or employee of LESSOR shall have the power to waive any of the terms or provisions hereof, or to incur additional obligations on behalf of LESSOR, unless such waiver or additional obligations are evidenced by an agreement in writing signed by a duly authorized officer of

LESSOR and by the LESSEE. No soliciting agent or employee of LESSOR shall have the authority to receive any payment of rentals or other sums accruing hereunder except remittances made payable to the order of LESSOR for purposes of forwarding same to LESSOR, and no soliciting agent or employee shall have any power to endorse for collection or otherwise any of those remittances. All indemnities contained in this Lease shall survive the expiration of this Lease.

29. If any provision of this Lease is held invalid, that invalidity shall not affect the other provisions that can be given effect without the invalid provisions, and to this end the provisions of this Lease are declared to be severable.

30. This Lease shall be deemed entered into in Illinois and governed by the laws of the State of Illinois. LESSOR and LESSEE hereby irrevocably consent to the nonexclusive personal jurisdiction of and venue of the State and Federal Courts located in the State of Illinois, with respect to any dispute arising under or involving this Lease or any guaranty of the LESSEE's obligations under this Lease.

31. LESSOR and LESSEE acknowledge that it is a material term and condition of this Lease that the Equipment shall not be deemed a fixture to real estate and that although the Equipment may be bolted to concrete pads and/or affixed to real estate to satisfy environmental and seismic requirements, the equipment is readily removable and skidable by design.

32. LESSEE shall have the option to purchase the Equipment at the end of the full term of this Lease as specified in Section 3 hereof for a sum equal to \$1.00. LESSOR shall deliver to LESSEE unencumbered title to the Equipment (excepting any encumbrances arising on account of LESSEE) and a bill of sale upon payment of the purchase option price by LESSEE.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first written above.

LESSOR:

WESTERN PETROLEUM COMPANY

By:

*[Handwritten signature of D. G. Jewett]*  
D. G. Jewett  
Vice President

LESSEE:

CITY OF DEKALB

By:

*[Handwritten signature of Gus Paell]*

Title:

*[Handwritten title: Mayor]*

ATTEST:

*[Handwritten signature of Steve Kapitan]*  
STEVE KAPITAN  
CITY CLERK

